IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 262 OF 2004

MES Employees' Union and anr. ... Petitioners

Vs.

Union of India and anr. ... Respondents

Mr. V.S. Kapse for Petitioner.

Ms. A.S. Kaushik for Respondents.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : APRIL 27, 2005

P.C.

. In view of the order dated 28.3.2005, Rule.

Heard forthwith.

. The Petitioners impugn the order of the Central Administrative Tribunal dated 29.10.2002. The Original Application was filed by the Petitioner herein to contend that the Respondents herein were bound to follow notification dated 24.10.1977 issued by the Government of India, Ministry of Defence, and that the general order No. 20/01 dated 1.6.2001 regarding the issue of residential area passes to civilian in so far as Para Nos. 6 and 7A are concerned for fixing validity period of five years or till allottees are in occupation of

the Government accommodation whichever is earlier is illegal and similarly some other reliefs against those directions. It is not necessary to advert to all contentions. The respondents took a stand that the issue of passes of family members of MES employees is not a service matter and does not come within the purview of the tribunal. It was secondly contended that the applicants are staying in Navy Nagar residential area. The accommodation to MES employees is located on Ministry of defence land wherein the Indian Navy has constructed residential quarters for their personnels posted in Mumbai area. The Respondent No. 1 had jurisdiction in order to ensure protection for all his residence to issue order. The Unit is separate and distinct and is located atleast 3/4 kms away from the nearest defence establishment and as such the order of 24.10.1977 will not apply.

. The learned tribunal considering the rival pleadings and contentions rejected the preliminary objection for want of jurisdiction and held that the tribunal had jurisdiction. In so far as applicability of the orders issued on 24.10.1977 it held that these are applicable to regular establishment in the Ministry of defence and would

not be applicable to the MES employees and accordingly dismissed the original application. It is this order which is the subject matter of the present petition.

. At the hearing of this petition, on behalf of the Petitioner, learned counsel points out that the notification dated 24.10.1977 would apply to all establishments. Reliance for that purpose is placed on Clause 1 which sets out that the President has been pleased to approve adoption of procedure in regard to the provisions of passes for entry into precincts of the service establishment including formations, units, installations and MES establishments. In other words, the order, applies to service establishment and the MES establishment would fall under the service establishment.

. The only question is whether the residential quarters of such MES employees will also fall within the meaning of the order dated 24.10.1977. The various clauses in the matter of issuance of family passes contains the following provision :

> "Families and dependents less children below 14 years of age of all service personnel and civilian employees residing

within the premises of such estt. will be issued with IAFZ-3049 or 3049-A as the case may be."

. It also contemplated in Para 3 for issuance of passes to servants. The cost of the photographs for the identity card in respect of the employees and their families and dependents has to be borne by the Government. The very fact that clause contemplates issuance of cards to families and dependents would indicate that it will also apply to residential quarters covered by the order dated 24.10.1977. On a reading of the order dated 24.10.1977 it would be clear that it would govern service establishments including MES which will also include any residential accommodation of MES employees.

. The defence of the respondent has been that the accommodation in occupation of the MES employees are outside the parameter of defence establishment and as such the Government order is not applicable.

. This issue was raised by the Union with the Respondent at the review meeting. In such

circumstances, whether the particular order is applicable or not and if there be disputes about the applicability, we think it ought to have been proper for the respondents to have referred the matter to the Government of India whose decision will be binding on both Petitioner and Respondents. We see no reason why such matters have to be brought by way of judicial review to the courts when the proper form would have been the Government of India to decide such issue and whose decision would be binding considering the nature of the controversy.

. In the light of that the impugned order of CAT is liable to be set aside. We further direct that the order dated June, 2001 and order No. 14/02 and any other order which requires entry passes, other than as contemplated by dated 24.10.1977 will not be given effect to for the period of three months or till such time that that the Government of India, Ministry of defence decides the issue. Till such time, the employees residing in the establishment will be governed by the notification of 24.10.1977 and their entries to the premises will be governed by the pass issued under that order till the decision by the Ministry of Defence, Government of India.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)